

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TYRONE BRATHWAITE,

Plaintiff,

22 Civ.

v.

COMPLAINT

NATIONAL RAILROAD PASSENGER CORP.,

JURY TRIAL REQUESTED

Defendant.
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Plaintiff, by his attorneys, Flynn & Wietzke, PC, complains of the Defendant and alleges:

THE PARTIES

1. The plaintiff is a resident of the State of New Jersey, County of Middlesex, and City of Carteret.
2. The defendant is a railroad carrier corporation providing railroad transportation, in interstate commerce by rail and operates a railroad system and railroad yards within the jurisdiction of this Court, with a usual place of business in New York.
3. Prior to November 22, 2020, and at all times hereinafter mentioned, the defendant employed the plaintiff as a signal maintainer under its direction, supervision and control and in furtherance of defendant's business in interstate commerce.
4. Prior to November 22, 2020 and at all times hereinafter mentioned, the defendant maintained, operated and controlled the East River Tunnel, New York, New York which contained defendant's tracks, rails, switches, sidings, roadbeds and appurtenances thereto, over, through and upon which the defendant operated engines, trains and cars under its control and direction.
5. During all times herein mentioned, the defendant was and is engaged in interstate commerce by providing railroad transportation among multiple states.

JURISDICTION AND VENUE

6. The plaintiff brings the First Cause of Action against the defendant for violation of the Federal Employers' liability Act, 45 U.S.C. §51 et seq. (FELA).

7. This Court has subject matter jurisdiction in this case pursuant to 45 U.S.C. §56.

8. Venue is proper in this District because a substantial part of the events or omissions giving rise to the claim occurred in this District, because defendant resides in this District and/or because defendant does business in this District.

FACTS

9. At the time of the defendant's FELA violations, the plaintiff was employed by the defendant and qualified as an employee within the meaning of 45 U.S.C. § 51.

10. On November 22, 2020, the plaintiff was working as a signal maintainer at the direction and training of defendant, when plaintiff was ordered to troubleshoot a problem with the signal system.

11. In the process of doing so, plaintiff moved a track wire and was confronted by an electrical explosion with an arc flash.

12. The explosion gave plaintiff temporary flash blindness, lighted his coat on fire, causing second degree burns to his arm at the wrist and causing tinnitus and short-term hearing loss.

13. The cause of the explosion was determined to be a portion of the power system, to wit a piece of 3rd rail left lying on the ground, adjacent to the running rail. The 3rd rail was not mounted on the brackets as intended, but had been left connected to the power system, and therefor energized.

14. It was thereafter determined that the same defect had triggered prior alarms and instead of investigating the source of the problem, the manager on duty overrode the alarm, effectively defeating the failsafe.

15. Defendant's conduct, more specifically set forth below, caused, in whole or in part, the plaintiff to suffer various physical, psychological and economic harms as set forth above.

COUNT I
Violation of FELA

16. The plaintiff adopts by reference and realleges each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if set forth under this cause of action.

17. This Cause of Action is brought under the Federal Employers' Liability Act, (45 U.S.C. Sec. 51 et seq.).

18. On or about November 22, 2020, while the plaintiff, an employee of the defendant, was in the performance of his duties as a signal maintainer in the East River Tunnel, New York, New York, the defendant, its agents, servants and employees, so negligently and carelessly conducted themselves toward the plaintiff:

- a. in failing to provide plaintiff with a reasonably safe place to work;
- b. in failing to warn plaintiff;
- c. in failing to heed prior warnings of a dangerous condition;
- d. in restoring power to the track area despite warnings of a power defect;
- e. in failing to de-energize;
- f. in leaving energized third rail lying on the ground;
- g. in failing to maintain plaintiff's work place; and, so negligently failed and neglected to enact and enforce safety rules, regulations, procedures, and practices for activities carried out by its personnel at the said place, that all of the foregoing brought about severe and disabling injuries to plaintiff, as set forth above.

19. The relevant injuries occurred while the plaintiff was acting in the furtherance of interstate commerce or in work closely or substantially affecting the same.

20. The plaintiff was damaged thereby in a sum in excess of \$150,000.00.

WHEREFORE, plaintiff demands judgment against the defendant on Count I in a sum in excess of ONE HUNDRED THOUSAND (\$150,000.00) DOLLARS; together with the costs and disbursements of this action.

Respectfully submitted

By: 

MARC WIETZKE

FLYNN & WIETZKE, PC

1205 Franklin Avenue

Garden City, NY 11530

Tel.: (516) 877-1234

E-mail: MWietzke@felaattorney.com